

TAXREP 86/08

TAX LAW REWRITE: BILL 6: CORPORATION TAX & BILL 7: INTERNATIONAL & OTHER

SALE AND LEASE-BACK ETC

***Memorandum submitted in December 2008 by the Tax Faculty of the
Institute of Chartered Accountants in England and Wales in
response to Paper CC/SC(08)43 issued in October 2008
by HMRC Tax Law Rewrite Team***

Contents

	Paragraph
Introduction	1-2
General comments	3-5
Answers to questions	6-16
Specific comments on draft legislation	17-19
Detailed comments on drafting	20-26

Annex 1 - Who we are

Annex 2 - The Tax Faculty's Ten Tenets for a Better Tax System

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The Tax Faculty of the Institute of Chartered Accountants in England and Wales

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Sale and lease-back etc

TAX LAW REWRITE: BILL 6: CORPORATION TAX

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INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(08)43 (Bill 6: Sale and lease-back etc) issued on 16 October 2008 at <http://www.hmrc.gov.uk/rewrite/index.htm>.
2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are in Annex 1. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex 2.

GENERAL COMMENTS

3. We are content with the restructuring of the anti-avoidance sections 779-785 ICTA (separately for corporation tax and income tax purposes) rewriting the four main operative sections in the source legislation separately in four Chapters dealing respectively with payments connected with transferred land, new lease after assignment or surrender, leased trading assets, and leased assets: capital sums. Having regard to the explanation in Bill 6 Explanatory Notes paragraph 138, we agree that the clauses in Chapter 3 should appear in the Part before the clauses in Chapter 4 (reversing the order of the sections in the source legislation). The structure of the clauses within each Chapter, and the inclusion within each of its specific interpretation clauses (the extent of any duplication being acceptable), is further helpful to the user of this legislation.
4. We comment on the proposed rewrite changes in our responses to Bill 6 Questions 3, 4, 5, 9 and 10 and their Bill 7 (ITA 2007 amendments) equivalents.
5. We note that consequential amendments, repeals and any savings and transitional provisions will be drafted in due course, and that consideration is being given to whether either or both of sections 782(7) and (9) of ICTA need to be rewritten.

ANSWERS TO QUESTIONS

6. **Q1** We are content with the structure of Part 1 (Sale and lease-back etc).
7. **Q2** We are content with the structure of Chapter 1 (Payments connected with transferred land).
8. **Q3** We support the proposal to put on a clear statutory footing, in clauses 2, 3 and 30, the practice of applying GAAP before applying section 779 or, as the case may be, section 782 of ICTA. Our response to Q1 on new Part 12A of ITA 2007 is the same, as applicable to sections 681AA, AB and CB of ITA 2007.

9. **Q4** We support the proposal to bring s 779(6)(d) ICTA into line with Self Assessment in clause 7 through sub-clause 7(3) requiring to be excluded so much of a payment as is just and reasonable. Our response to Q2 on new Part 12A of ITA 2007 is the same, as applicable to s 681AF of ITA 2007.
10. **Q5** We support the proposal to carry Change 2 [jc 310] in Bill 5 through into Bill 6.
11. We similarly support its being carried into Bill 7 as affecting s 681DP of ITA 2007 (Bill 7 Q5 refers).
12. **Q6** We are content with the structure of Chapter 2 (New lease after assignment or surrender).
13. **Q7** We are content with the structure of Chapter 3 (Leased trading assets).
14. **Q8** We are content with the structure of Chapter 4 (Leased assets: capital sums).
15. **Q9** We support the proposal to require the unallowed amount in clause 44(5)(a) to be reduced to a proportion which is not only reasonable but also just. Our response to Q3 on new Part 12A of ITA 2007 is the same, as applicable to s 681DE of ITA 2007.
16. **Q10** We support the proposal to require apportionments under clause 49 (Apportionments of payments made and of sums obtained) to be not only just but also reasonable. Our response to Q4 on new part 12A of ITA 2007 is the same, as applicable to s 681DJ of ITA 2007.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

Bill 6: cl 23 Position where lease may be varied

17. **(1)** Whilst varying the lessee's obligations under the lease 'in a manner beneficial' to the lessee covers all transactions, it is arguable that the source s 780(2)(b)(ii) ICTA reference to varying his obligations 'so as to reduce the rent which he would otherwise have to pay or in any other manner beneficial to him' is more helpful to the user.
18. The same comments affect Bill 7 clause 681BH(1) to be inserted in ITA 2007.

Bill 6: cl 41 Payment under lease

19. **(3)** Having regard to Bill 6 Explanatory notes paragraph 139, we agree that it is appropriate to include clause 41(3).

DETAILED COMMENTS ON DRAFTING

Bill 6: cl 15 Overview

20. **(1)(b)** Is there any reason why the reference in clause 15(1)(b) is to tax relief 'allowed' whereas in the equivalent Part 12A of ITA 2007 section 681(1)(b) the reference is to 'allowable'?

Bill 6: cl 22 Position where lease may be ended

21. Is there any reason why the reference in Bill 6 Explanatory Notes paragraph 85 is to 'has a provision' whereas in the equivalent Bill 7 Explanatory Notes paragraph 85 the reference is to 'makes provision'?

ITA 2007 s 681BK Relevant income tax relief

22. The drafting of Bill 7 Explanatory Notes paragraph 40, with its reference to listing rather than definition, is preferable to the drafting of the equivalent Bill 7 paragraph 95.

Bill 6: Overview

23. In Bill 6 Explanatory Notes paragraph 131 the final bullet point should read 'Clauses 51 to 56 ...'.

ITA 2007: s 681DG Sum obtained in respect of interest

24. In Bill 7 Explanatory Notes paragraph 165 it appears that 'a lease of' should be removed from the quotation. Section 681DG of ITA 2007 refers to 'a sum obtained in respect of an interest in an asset'.

ITA 2007: s 681DM Capital sum

25. In s 681DM(a) for 'calcuating' substitute 'calculating'.

ITA 2007 s 681DQ Meaning of "hire purchase agreement"

26. In Bill 7 Explanatory Notes paragraph 182, should the reference to 'Part 20' of ITA 2007 be to 'Part 17'?

TJH/PCB
17.12.08

ICAEW AND THE TAX FACULTY: WHO WE ARE

1. The Institute of Chartered Accountants in England and Wales (ICAEW) is the largest accountancy body in Europe, with more than 128,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.
2. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department for Business, Enterprise and Regulatory Reform through the Financial Reporting Council. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy, including taxation.
3. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter *TAXline* to more than 10,000 members of the ICAEW who pay an additional subscription.
4. To find out more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at taxfac@icaew.com or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

THE TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as **TAXGUIDE 4/99**; see <http://www.icaew.co.uk/index.cfm?route=128518>.